

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

FRED SMITH,

Plaintiff,

VS.

JUSTIN JONES, et al.,

Defendants.

CIV-12-1365-HE

SUPPLEMENTAL REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. §1983 on December 10, 2012. The matter was re-referred to the undersigned Magistrate Judge by United States District Judge Heaton on March 4, 2013, for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). Plaintiff has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Having reviewed said motion and affidavit, the undersigned finds that Plaintiff has sufficient financial resources to pay the filing fee. Because he does not qualify for authorization to proceed without prepayment of the filing fee, Plaintiff's motion should be denied, and he should be required to pay the full filing fee for this action to proceed.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the motion for leave to

proceed *in forma pauperis* be DENIED and the action be dismissed without prejudice unless Plaintiff pays the full filing fee to the Clerk of the Court by March 25th, 2013. Plaintiff is advised of his right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by March 25th, 2013, in accordance with 28 U.S.C. §636 and LCvR 72.1. The failure to timely object to this Supplemental Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).

This Supplemental Report and Recommendation partially disposes of issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 5th day of March, 2013.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE